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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 312

GEORGE FORD, GEORGE HARRIS, J. EVELYN, CHARLES H. Belanger, and Vincent Quartararo, Petitioners

v.

UNITES STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court (R. 42–58) on a motion to suppress the seized evidence is reported in 3 F. (2d) 643. The opinion of the Circuit Court of Appeals (R. 840–867) is reported in 10 F. (2d) 339.

JURISDICTION

The judgment of the Circuit Court of Appeals, under review, was entered January 4, 1926 (R. 869). The petition for certiorari, filed on March 15, 1926, was granted pursuant to Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936).

THE QUESTIONS PRESENTED

The primary question presented is whether, on the facts disclosed, the officers of the United States were justified, under the terms of the Treaty with Great Britain relating to rum ships, in seizing the British vessel *Quadra,* with her crew and cargo of liquor and in bringing her into port.

Another question is whether a stipulation is implied and must be read into that treaty that only the vessel so seized may be proceeded against, and that her crew or other persons on board are exempt from prosecution and must be allowed to return to the high seas or leave the United States.

Another question is whether persons without the United States, conspiring to violate its laws with those who are within the United States and committing overt acts therein, and who, remaining on the high seas outside of the 3-mile limit, cooperate with their fellow conspirators within that limit in violating the law, pursuant to the conspiracy, commit offenses against our laws for which they may be tried and punished.

Other questions relate to the sufficiency of the indictment and the admissibility of certain evidence.

STATEMENT

The petitioners and 55 others were indicted in November, 1924, for conspiracy to commit offenses against the laws of the United States by introducing into and transporting in the United States liquor

in violation of the National Prohibition Act, and by importing liquor into the United States in violation of Section 593, subdivision (b) of the Tariff Act of 1922, making it a penal offense to introduce merchandise into the United States in violation of law. (R. 5–18.)

Ford, Harris, and Evelyn were, respectively, the master and first and second officers of the *Quadra,* a rum-running vessel of British registry, which was seized and brought into port by revenue officers. Belanger was a director of the Canadian corporation which owned the cargo. Quartararo was the San Francisco agent of the cargo owner. Defendants Sam Crivello and Marino Crivello pleaded guilty. Twenty-nine of the defendants were tried. Nineteen of them were acquitted, and ten, including the five petitioners, were found guilty. (R. 74–75.) The case was tried and the petitioners were convicted on the theory that Quartararo, Belanger, the Crivellos, and others, operating within the United States on behalf of the cargo owner, were working in combination with the officers of the vessel, which remained just outside the 3-mile limit, and with whom they were in direct contact and communication, and caused liquor to be unladen into small boats sent out on behalf of the cargo owner for delivery to the cargo owner on shore. (R. 88–92.) As was said by the Circuit Court of Appeals, "This is not the simple case of the sale and delivery of liquor on the high seas by a foreign vessel." (R. 848.)

On October 12, 1924, the Coast Guard Cutter *Shawnee,* while in neighborhood of the Farallone Islands on the lookout for rum vessels, observed the *Quadra,* a British steamer of Canadian registry, apparently hove to near those islands. As the *Shawnee* bore down on the *Quadra* to investigate, the latter vessel turned and began to move slowly offshore. Captain Howell, of the *Shawnee,* thereupon signaled the *Quadra* to stop, as he wished to speak to her, and she complied. As the *Shawnee* passed under the stern of the *Quadra* the motor boat *C–55* was seen about 200 yards from the *Quadra,* proceeding away from her side and headed offshore. Captain Howell signaled the *C–55* to stop, and, upon her failure to respond, fired a shot across her bow, whereupon she rounded to and came alongside the *Shawnee.* She had two men and a number of sacks of intoxicating liquor, as well as a partly filled case of beer bottles. She was made fast to the *Shawnee* and the two men were placed under arrest. (R. 93–96.) Captain Howell sent two officers on board the *Quadra* to examine her papers. These officers reported that Captain Ford, of the *Quadra,* had refused to show his papers or give any information until he had consulted counsel. The *Quadra,* which had on board a large quantity of intoxicating liquors, was thereupon taken in charge, and upon refusal of Captain Ford to steam in, the *Quadra* was towed into the port of San Francisco and her cargo turned over to customs officers and her officers arrested.

(R. 101–105, 185.) The indictment, filed shortly afterwards, averred that the conspiracy was entered into at the bay of San Francisco by the defendants (R. 11), including four persons who had been apprehended by the Coast Guard officers in motor boats containing intoxicating liquors which had been traced to the *Quadra* or to the *Cold Harbour,* another vessel stationed off the coast of California, for similar illegal purposes. (R. 187, 202–203.)

It was charged, among other things, that the defendants caused the *Quadra* to leave Vancouver with a cargo of 12,000 cases of intoxicating liquor and to proceed to a point near the Farallone Islands for the purpose of unloading and bringing the intoxicating liquors into the United States for beverage purposes and that a portion of them was unloaded to motor boats *903–B, C–55* and other motor boats. (R. 13–14.)

While there was a conflict in the evidence, there was evidence to show, and both lower courts have found, that the *Quadra* when seized was 5.7 nautical miles from the Farallone Islands. The lower courts found (R. 602–603, 855–856), and there was evidence to sustain the finding, that the *C–55,* the motor boat observed conveying liquor from the *Quadra,* could have traversed the distance of 5.7 miles from the *Quadra* to the shore in less than an hour. Subsequent tests of the speed of the *C–55,* made with three men on board, showed a speed of 6.6 knots. (R. 159–163.)

The general scope of the conspiracy and of the transactions in pursuance of it are well set forth in the opinion of the Circuit Court of Appeals. (R. 839–867.) The evidence shows that Quartararo, representing the cargo owners, together with Belanger, a director of the cargo-owning corporation, operated in the Northern District of California and employed Crivello and various motor boats to bring liquor from the *Quadra* and other vessels, the *Malahat* and the *Norburn,* into Oakland Creek, in San Francisco. The liquor from the *Quadra* was not sold to outsiders on the high seas but was delivered to the agents of the cargo owners on shore, through the combined efforts of those on shore and those on the vessels. The *Quadra* and its officers were in constant touch with those on shore and with the other vessels, and operated to some extent under orders and directions from the cargo agents on shore. Sacks as containers for bottled liquor were sent out from shore to the *Malahat* and transferred to the *Quadra.* Belanger gave written orders to transfer liquor from one vessel to another and orders to bring liquor from the vessel's cargo to shore. The delivery of liquor was in fulfillment of orders designated by number and deliveries on shore were made pursuant to prearrangements. (R. 169, 172, 227, 229, 253–256, 339, 412.) The *Quadra* was supplied with oil from the shore, this service being evidently rendered pursuant to prearrangements. (R. 848.)

The *Malahat* left Vancouver in May with a cargo of liquor destined to Buenaventura, Columbia. The *Coal Harbour* left the same port in July with a cargo of liquor destined to La Libertad, San Salvador, and the *Quadra* left Vancouver in September carrying a large cargo of a miscellaneous lot of liquors destined for La Libertad. The shipper of all these cargoes was the Consolidated Exporters Corporation (Ltd.), a Canadian corporation, of which Belanger was one of the directors. (R. 848.) None of these vessels proceeded to their destinations, but went to a point on the high seas off the Golden Gate, where they exchanged liquor with each other and delivered liquor as indicated to the shore.

THE TREATY

The Treaty between the United States and Great Britain, proclaimed May 22, 1924 (43 Stat. 1761), is entitled "Convention between the United States and Great Britain for prevention of smuggling of intoxicating liquors." It recites that the parties are "desirous of avoiding any difficulties which might arise between them in connection with the laws in force in the United States on the subject of alcoholic beverages." Articles I and II are as follows:

ARTICLE I

> The High Contracting Parties declare that it is their firm intention to uphold the principle that 3 marine miles extending from the coastline outwards and measured from low-

water mark constitute the proper limits of territorial waters.

ARTICLE II

(1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions for adjudication in accordance with such laws.

(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions than can be traversed

in one hour by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States, its territories or possessions by a vessel other than the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised.

SUMMARY OF ARGUMENT

I. The seizure of the *Quadra* was within the terms of the treaty because the circumstances at the time gave reasonable cause for belief that the vessel and those on board had committed or were committing or attempting to commit an offense against the laws of the United States prohibiting the importation of alcoholic beverages, and there was evidence to sustain the finding that a boat intended to convey liquor to shore could traverse the distance to shore within an hour and that the seizure was within the limit of distance fixed by the treaty.

II. The treaty contemplates that the vessel, her cargo, and those on board shall be brought into port. When that is done, if it appears that the persons on board have committed an offense, they may be prosecuted therefor. The treaty does not, by its terms, provide that the crew or cargo must be released, and no such stipulation is implied. The implication is to the contrary, and the attempt to

establish an analogy between this case and extradition cases fails. There is nothing in the treaty to sustain the claim that the crew may not be tried for any offense, and the treaty should not be narrowly construed only to permit their trial for violation of the substantive offense of introduction of liquors, but not for conspiracy to do so. The treaty should be construed to carry out its purpose and to relate to violations of law on the subject of alcoholic beverages.

III. Although the officers of the vessel did not physically come within the territorial limits of the United States, they were parties to the conspiracy to commit crime within the United States made by them with those within the United States, and they directly aided, abetted, and combined with those within our jurisdiction in the commission of overt acts within the United States and are therefore subject to trial and punishment under our laws.

IV. The statement in the indictment that the defendants conspired to unlawfully introduce liquor into the United States in violation of the treaty did not render the indictment bad. The treaty does not define or punish crimes, but this statement in the indictment may be treated as surplusage.

V. The objections to the admission of certain evidence are without substance.

ARGUMENT

I

THE SEIZURE OF THE "QUADRA," HER CARGO AND CREW, WAS NOT IN VIOLATION OF THE TREATY

The treaty provides that a seizure of a rum vessel may be made without objection from His Britannic Majesty if two conditions are satisfied. First, there must be reasonable cause for belief that the vessel "has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages"; and second, that the vessel is not at a greater distance from the coast than it can traverse in one hour, or if the liquor is "intended to be conveyed to the United States" by another vessel that the distance can be traversed within an hour by the other vessel. There was ample evidence to sustain the finding of the trial court that the revenue officers had probable cause. The *Quadra* was loaded with liquor, she was only 5.7 miles out, she acted suspiciously, a motor boat was observed actually removing liquor from her, and her master refused to show her papers, circumstances which justified the suspicion that she had committed or was endeavoring to commit offenses against the laws relating to the importation of beverages.

A vessel may commit such an offense by herself coming within the 3-mile limit or she may commit such an offense while remaining outside of the terri-

torial limit by using her own boats, tackle, or crew to transport or unload the liquor within the 3-mile limit, and, although the vessel remains outside the 3-mile limit and does not use her boats, tackle, or crew within that limit, she may participate in an offense against our laws as may an individual by being in direct contact and combination with those on shore and acting, aiding, and abetting those within our limits. *Grace and Ruby,* 283 Fed. 476; *Henry L. Marshall,* 292 Fed. 486.

The contention of the petitioners that a vessel can not commit an offense against our laws if neither she nor her boats, tackle, or crew come within the 3-mile limit is not sustained by the authorities, and the address of Charles E. Hughes, Secretary of State, set forth in the petitioners' brief, says:

> In view, however, of the historic practice of nations in the protection of their territory from the violation of their laws by hovering vessels, the United States Government can not admit that the accepted rules of international law preclude such action as that taken in the circumstances of the *Marshall* case. (Note, p. 30, of petitioners' brief.)

However that may be, the revenue officers who seized the *Quadra* had reasonable ground to believe that she had committed or was attempting to commit an offense against our laws, either by going within the 3-mile limit or sending boats there, or through cooperation and contact with those on shore while remaining outside of that limit.

The second condition of the treaty was satisfied by proof of the speed of the motor boat observed transporting liquor from the *Quadra*. There was ample evidence to sustain the finding that the *Quadra* was only 5.7 miles from the coast. The motor boat, later tested, was shown to have a speed of 6.6 knots. It is contended that this test was insufficient, because the exact conditions existing at the time of the seizure were not shown to exist at the time of the test. The motor boat had two men on board at the time of seizure, and three men when the test was made. She had some bottles of whiskey on board when seized, but none when tested, and it did not appear that exactly the same conditions of wind and weather existed. These criticisms of the proof are captious. The contention that the treaty should be construed to require tests of speed to be rejected as evidence unless made under identical conditions with those existing at the time of seizure should not be sustained. The question is whether under average conditions the boat in question has the required speed.

Since the seizure was lawfully made, the vessel, her cargo, and crew were lawfully brought within the United States and the motion to suppress and exclude the ship's papers and part of her cargo as evidence, on the ground that they had been illegally seized, was properly denied. If the seizure had not been in compliance with the terms of the treaty, it would not follow that the provision against un-

reasonable search and seizure in the Constitution would be applicable and require rejection of the evidence, but since the seizure was manifestly in accordance with the treaty, no consideration of that point is necessary.

II

THE TREATY DOES NOT, BY IMPLICATION, PROHIBIT THE PROSECUTION OF INDIVIDUALS FOUND ON THE SEIZED VESSEL

As we understand it, the petitioners' contention is that the treaty contemplates that the vessel alone shall be brought into port for adjudication, and that there should be read into the treaty, by implication, a provision that the crew or other persons found on her and brought into port with her may not be prosecuted for any offense against our laws. They further contend that if the crew may be prosecuted for some offense, it must be a substantive offense against a law "prohibiting the importation of alcoholic beverages," and that the offense of conspiracy to violate that law is not within the contemplation of the treaty. To support this contention, the attempt is made to establish an analogy between the extradition treaty cases and the case at bar. The rule in the extradition cases is that if a person is surrendered by one country under an extradition treaty, on the representation that he has committed a specific offense and that he is wanted for trial for it, he may not be tried for an offense for which he was not extradited until he has

been given an opportunity to return to the country from which he was taken. *United States* v. *Rauscher,* 119 U. S. 407.

If the petitioners are right in their contention that the seizure was not in pursuance of the treaty, but illegal and wrongful, the case would be controlled by *Ker* v. *Illinois,* 119 U. S. 436, which holds that a person kidnaped and brought within the jurisdiction may be tried, but since we contend that the seizure was lawful and in accordance with the terms of the treaty, the other question must be dealt with.

There is no such reason for reading into this rum treaty an implied agreement not to try the crew of a vessel as there is in extradition cases, such as the *Rauscher* case, for reading into an extradition treaty an implied agreement not to prosecute the one indicted for a different offense from that for which he was extradited. The extradition case involves a misrepresentation and bad faith, which does not exist here.

The treaty is somewhat loosely drawn, but such implications as are to be made are that the crew of a vessel may be prosecuted at least for offenses having to do with the smuggling of intoxicating liquors into the United States. Article II provides that no objection is made to a search of British vessels " for the purpose of ascertaining whether the vessel *or those on board* are endeavoring to import or have imported alcoholic beverages into the

United States * * * in violation of the laws there in force." It refers to offenses by individuals as well as to offenses by the vessel. The vessel is an inanimate object and can not well offend against the law unless some on board of her are doing so.

The next subdivision provides that if the vessel has committed or is committing or is attempting to commit an offense, the vessel may be seized and taken into a port of the United States for adjudication in accordance with its laws. The petitioners contend that this means that only the vessel may be adjudicated, which impliedly excludes the idea that proceedings may be taken against the crew. There is no provision in the treaty for taking the crew or cargo into the United States, and, by the same narrow reasoning applied by the petitioners, only the vessel, her engines, tackle, and equipment may be taken into port and her crew and cargo must be set adrift or thrown overboard. It is obvious that when the treaty says the vessel may be taken into port it means that the vessel, her crew, and her cargo may be taken into port, and when it says that the vessel may be taken into port "for adjudication," it means that the vessel, her cargo, and her crew may be taken into port for adjudication. If the crew may not be proceeded against, neither may the cargo. If British citizens on board are immune, every person on board, including American citizens, would be. There is nothing in the terms of the treaty nor in the principles underlying the

extradition cases that requires the courts to read into this treaty a provision of that kind which the parties did not insert.

The suggestions of the petitioners that diplomatic complications will result from sustaining the Government's position and that the United States by so applying the treaty would be acting in bad faith are unfounded. There is not the slighest ground for the contention that Great Britain has ever suggested or contended that under this treaty the crew of a vessel lawfully seized could not be brought into port, nor tried according to our laws. Diligent as the representatives of that nation have been in guarding the rights of their people under this treaty, such a construction of the treaty has not been advanced. On the contrary, the records of the State Department disclose a practical construction and understanding of the treaty in accordance with our views. There have been many cases where, following seizure of British ships hovering on our coasts, those on board have been indicted and tried for offenses against the laws relating to intoxicating beverages, and the State Department records show that although there have been some differences between the two governments with respect to the application of the treaty in other respects, there has been none on this point. It is sufficient to quote from one document, a communication from the British Embassy to the Secretary of State, dated June 30, 1925, relating to the case of the British schooner *Frances E,* which was

seized off the coast of Alabama, and whose master and crew were arrested and indicted and subsequently tried for conspiracy to smuggle intoxicating liquors into the United States, and which says:

> As you are doubtless aware, the British schooner *Frances E* of Nassau was seized by a United States revenue cutter on April 24th last and was later escorted into the Port of Mobile, Alabama, where her master and crew were arrested and charged with conspiracy to violate the National Prohibition laws.
>
> I am informed that the defendants in this case have now been incarcerated in gaol since April 28th last, and are still awaiting trial and that the long delay, added to their uncertainty as to the future is causing them considerable suffering.
>
> I request therefore that you will move the competent authorities of the United States Government to inquire into this matter with a view to expediting the trial of these British subjects, and I shall be glad to be informed in due course of the result thereof.

A letter of October 4, 1925, on the same subject, says:

> I am instructed by His Majesty's Government to draw your urgent attention to the fact that the master and crew of the *Frances E* have been under detention since April 28th last and that their case is still unsettled. His Majesty's Government are unable to understand the reason of the long delay which has occurred in this matter, and

> I have accordingly the honor to request that you will move the appropriate authorities of the United States Government to expedite a disposition of this case and inform me of the result in due course.

The British Government has urged expedition in the trial of British crews, but has never suggested that they should be treated as immune from prosecution.

Communications have been exchanged between the two governments respecting the case of the *Quadra,* but it has been left to the petitioners to suggest that the crew are immune from prosecution.

A minor contention of the petitioners is that the treaty, if it permits prosecution of the crew at all, confines it to violation of the laws "prohibiting the importation of alcoholic beverages"—that is to say, the substantive offense—and that conspiracy to commit that substantive offense must be excluded. This narrow construction of the treaty should be rejected. One of the communications quoted above assumes a conspiracy charge to be proper. The treaty should be construed in accordance with its purpose.

It was made with a view to preventing smuggling of intoxicating liquors into the United States and to avoid difficulties which might arise between the two governments "in connection with the laws in force in the United States on the subject of alcoholic beverages." Any law which operates to make

the introduction of intoxicating beverages illegal, even though it applies to other articles and does not specifically mention liquor, is within the contemplation of the treaty, and a conspiracy to commit a substantive offense, followed as it must be by overt acts of illegal importation, is fairly within the spirit and purpose of the treaty. It may be contended by the United States, with good ground, that there is nothing in this treaty which impliedly prohibits the United States from prosecuting those on board seized vessels for any crime which it may appear they have committed, whether relating to liquor or not, but it is not necessary in this case to do so.

The question we have discussed is not one of jurisdiction. Petitioners, having been brought into the United States, were within the jurisdiction of the trial court. The question is whether we have a law in the form of a treaty which forbade the trial of the petitioners unless they voluntarily remained in the United States or afterwards came into it under other circumstances. It is not clear that the record raises the point at all. The objections to the indictment could not raise it, and in the lower courts counsel proceeded on the theory that it was a question of jurisdiction, and all his moves to raise that point called for acquittal or verdict of not guilty, which are plainly inappropriate. Neither does it appear clearly from the record that the petitioners had no opportunity to leave the country after they and their vessel were brought

Insert on page 21, Government's brief, No. 312, Ford v. United States, under Point III.

Additional authorities in support of contention of the United States that one outside the jurisdiction may commit a crime within it, some of which deal with conspiracy and some with substantive offenses, are as follows:

Commonwealth v. *Gillespie,* 7 Serg. & Rawle 469.
Lindsey v. *The State,* 38 Ohio State 507.
State v. *Grady,* 34 Conn. 119.
People v. *Werblow,* 241 N. Y. 55.
Weil v. *Black,* 76 West Va. 685.
State v. *Piver,* 74 Wash. 96.
People v. *Ware,* 67 Cal. App. 81.
King v. *Brissac,* 4 East 164.
Hyde v. *United States,* 225 U. S. 347.
Lamar v. *United States,* 240 U. S. 60.

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into port. A statement of the trial judge in his opinion on the motion to suppress the evidence that the crew were arrested and brought into port is the only thing in the record. (R. 43.) As the point is important, even though no exception was properly taken below and no proper assignment of error in the Circuit Court of Appeals was made, this Court may, and probably should, decide it.

III

THE OFFICERS OF THE VESSEL, ALTHOUGH NOT PHYSICALLY WITHIN THE TERRITORIAL LIMITS OF THE UNITED STATES, COMMITTED A CRIME AGAINST ITS LAWS

One personally outside of the jurisdiction may commit a crime within it. *United States* v. *Davis*, 2 Sumner 482; *In re Palliser*, 136 U. S. 257; *Horner* v. *United States*, 143 U. S. 207; *Benson* v. *Henkel*, 198 U. S. 1; *Commonwealth* v. *Macloon*, 101 Mass. 1; *People* v. *Adams*, 3 Denio 190; *McLoughlin* v. *Raphael Tuck Co.*, 191 U. S. 267. In *Reg* v. *Garrett*, 1 Dearsly 232, Lord Campbell said:

> If a man employ a conscious or unconscious agent in this country, he may be amenable to the laws of England, although at the time he was living beyond the jurisdiction.

See *Latham* v. *United States*, 2 F. (2d) 208; *United States* v. *Craig*, 28 Fed. 795; *Burton* v. *United States*, 202 U. S. 344; *Strassheim* v. *Daily*, 221 U. S. 280; *Dealy* v. *United States*, 152 U. S. 539.

The evidence shows that the officers of the vessel while on the high seas near our coast conspired, combined, and confederated with those on shore to unlawfully introduce intoxicating liquors into the United States. Those conspirators on shore committed overt acts within the limits of the United States in pursuance of the conspiracy. The officers of the vessel committed overt acts on the high seas immediately outside of our territorial limits. The vessel and her officers actually participated with those on shore in the act of introducing the liquor into the United States. The contention that the officers of the vessel committed no offense because never within the territorial limits is without substance.

IV

THE SUFFICIENCY OF THE INDICTMENT WAS NOT AFFECTED BY THE ALLEGATION THAT THERE WAS A CONSPIRACY TO VIOLATE THE TREATY

The author of the indictment seems to have had the mistaken impression that the treaty attempts to define or punish crimes against the United States, and, in addition to alleging a conspiracy to violate the National Prohibition Act and the Tariff Act, stated that the conspiracy was to violate the treaty. It was not essential that any specific statute be referred to in the indictment. The reference to the treaty was mere surplusage. The indictment stated an offense without that reference, and therefore stated an offense notwithstanding the reference.

V

THE EVIDENCE RESPECTING THE NORBURN, THE MARKED DOLLARS, AND TELEGRAM OF BELANGER WAS PROPERLY RECEIVED

The remaining contentions advanced by petitioners deal with the affirmance by the Circuit Court of Appeals of the action of the District Court in admitting in evidence: (1) Certain testimony for the Government of the defendant Sam Crivello as to his securing about May 1, 1924, under employment of the defendant Quartararo, a boatload of intoxicating liquor from the steamer *Norburn;* (2) testimony regarding certain one-dollar bills with notations thereon in the handwriting of the defendant Quartararo, and (3) a telegram sent by the defendant Belanger.

The "Norburn" incident

As to the *Norburn* testimony, petitioners urge that it concerned a conspiracy which was separate and distinct from the one charged in the present indictment, which related solely to the steamer *Quadra,* and that the testimony of Crivello regarding his trip to the *Norburn* was therefore erroneously admitted by the District Court over the defendants' objection. It is to be noted, however, that the present indictment does not charge a conspiracy confined to the actions of the steamer *Quadra* and those on board that vessel. On the

contrary, the indictment charges (R. 11–13) that the defendants—

> did * * * on the 1st day of January, 1924, the real and exact date of which is to this Grand Jury and these Grand Jurors unknown, and continuously at all the times thereafter up to and including the date of the filing of this indictment, * * * willfully * * * conspire * * * together and with divers other persons whose names are to these Grand Jurors and to this Grand Jury unknown, to commit certain offenses against the United States, that is to say: * * *.

The indictment then charges that the conspiracy was to willfully, feloniously, etc., sell, import, transport, etc., intoxicating liquors within the United States for beverage purposes in violation of the National Prohibition Act, and to willfully and feloniously, etc., import and bring, and to assist in importing and bringing, into the United States merchandise contrary to law in violation of Section 593, subdivision (b) of the Tariff Act of 1922, and that the conspiracy had continued down to the time of the filing of the indictment. The references therein to the *Quadra* were merely set out as overt acts alleged to have been committed in furtherance of the conspiracy.

The testimony of Sam Crivello (R. 216–235) shows that about April or May, 1924, the witness, under employment of the defendant Quartararo, visited the steamer *Norburn,* outside the

Farallones, in the gasoline launch *California,* and brought back a boatload of intoxicating liquor from that steamer which the witness delivered to Quartararo at Oakland Creek, San Francisco (R. 217–220); that about the same time and under the same employment the witness brought in another boatload of intoxicating liquor from the *Norburn* in the motor boat *Skidaddle,* which motor boat was furnished him by Quartararo; that the witness made another similar trip and delivery about the middle or the last of May, at which time, however, he used the *California* (R. 231); that beginning with the first of August, 1924, the witness made approximately eight trips in the *California* out to the steamer *Malahat* and brought in about 800 to 1,000 cases of intoxicating liquor each trip and delivered said liquor at Oakland Creek in the presence of Quartararo, who paid his wages (R. 226–230); that in the early part of September, 1924, the witness made another trip in the *California* out to the *Malahat,* but being unable to fill his order from that vessel, the master of the *Malahat* gave him an order on the master of the *Quadra* for intoxicating liquors to complete his order and that upon presentation of said order he received from the *Quadra* 49 to 50 cases of such liquor, whereupon he proceeded with his full load to Oakland Creek and delivered it to Quartararo (R. 226–227); that he was introduced at Quartararo's place of business to one "C. H.," whom the witness pointed out in the court room as the defendant Belanger; and that at

Belanger's request the witness took some empty sacks out to the *Quadra* (R. 227–228). In view of this evidence it is clear that the Circuit Court of Appeals committed no error in holding that the testimony regarding Crivello's first trip to the *Norburn* was admissible as tending to show a conspiracy to import intoxicating liquors for beverage purposes in which Belanger and his corporation were original parties or to which they and the crew of the *Quadra* subsequently adhered.

The marked dollar bills

Regarding the marked dollar bills, there was testimony on behalf of the Government by A. F. Pearson, chief teller of the Bank of Italy at San Francisco, that in November, 1924, he had a conversation at that bank with the defendant Quartararo with reference to the redemption of some one-dollar bills; that the witness told Quartararo that if he brought the bills in the witness would tell him whether they could be redeemed; that about two or three days later a man—the witness did not recall whom—brought to the bank some torn dollar bills and left them with the witness; that that afternoon the witness pasted some of the bills together and had another man do the remainder; and that subsequently the bills were turned over by the witness to one Hoskins, a teller of the bank. (R. 240–244.) Hoskins testified that he saw Quartararo in the bank talking to the chief teller, but did not overhear the conversation; that the torn

dollar bills were first shown to him some time Monday morning, but he didn't know who brought them there; and that after they were pasted together he took them down to the Federal Reserve Bank, which redeemed them for $83.00. (R. 238–240.) The Government thereupon introduced the testimony of several witnesses who identified Quartararo's handwriting upon the signature card of his personal account in the Bank of Italy, upon two checks drawn on that account by Quartararo, and upon Quartararo's affidavit of registration. Photostat copies of these papers were, by leave of court, introduced by the Government as exhibits. (R. 245–251.)

The Government also introduced the testimony of E. O. Heinrich, who, after qualifying as an expert in handwriting, testified that upon a comparison of the aforesaid exhibits with certain marks and writings on the reverse side of the dollar bills (comprising lists of intoxicating liquors, R. 861), it was his opinion that they were in the handwriting of Quartararo (R. 265–278). There appears to be no other evidence in the record to connect the exhibits with the conspiracy charged, and Circuit Judge McCammant, who wrote the majority opinion of the Circuit Court of Appeals, dissented from the majority on the ground that the introduction of this evidence was prejudicial to Quartararo. (R. 859–862.) But, as above shown, the evidence connecting Quartararo with the conspiracy charged in the indictment was otherwise so abundantly

proved that the alleged error complained of, assuming that such error existed, could not, in view of Section 269 of the Judicial Code as amended by the Act of February 26, 1919 (c. 48, 40 Stat. 1181), be regarded as sufficiently prejudicial to justify a reversal of the conviction of Quartararo.

The Belanger telegram

The Government was permitted, after both sides had rested, to reopen the case for the purpose of introducing the following telegram (R. 863–864):

SAN FRANCISCO, *June 24/24.*

GEO. NORGAN,
Room 1052 Biltmore Hotel,
Los Angeles, Calif.:

Merchandise not yet reached market. Therefore can not report anything different. Stop. Have appointment with Vince to-morrow who will make proposition in morning. Things shaping good. Regards.

C. H.

The original of this telegram was in typewriting. The agents of the telegraph company took the name of the sender as "C. H. Belanger, Somerton Hotel," and evidence was received that the defendant Belanger was registered at said hotel on that day. (R. 563–564.) It was the Government's theory that the telegram, which was addressed to a director in the Canadian corporation which owned the liquor cargoes of the *Quadra,* the *Malahat,* and the *Coal Harbour,* was sent by Belanger, that the word "merchandise" meant intoxicating liquor, and that the word "Vince" meant Vincent Quartararo. Counsel

for Belanger objected to the introduction of the telegram, and the objection being overruled, offered proof which did not deny the authenticity of the telegram but tended to show that it did not relate to any liquor transaction. (R. 566–591.) This raised a question for the jury as to the purpose of the telegram, and all the evidence relating to it was submitted to the jury with the other evidence in the case. In passing upon the question of the admissibility of this evidence the Circuit Court of Appeals said (R. 865):

> We think that the circumstances were sufficient to constitute a *prima facie* authentication of the wire and that it was properly received.

Petitioners insist that the receipt in evidence of this telegram was improper as being in no way connected with the conspiracy charged. Even upon the assumption that this were so, Belanger's connection with the conspiracy was so clearly shown by other testimony in the record that the alleged error could work no prejudice as to him.

The judgment below should be affirmed.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.
MABEL WALKER WILLEBRANDT,
Assistant Attorney General.
JOHN J. BYRNE,
Attorney.

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